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**United Kingdom –
Recommendations from
MAC Review of Tier 2 Visa
Programme**

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flash Alert

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The U.K.'s Migration Advisory Committee (MAC) published its "Review of Tier 2: Balancing migrant selectivity, investment in skills and impacts on U.K. productivity and competitiveness."¹ The report addressed a number of issues, including:

- How to make the Tier 2 visa process more selective;
- The introduction of an immigration skills charge;
- Ways to tighten the intra-company transfer route;
- Whether to continue dependants' automatic work rights.

It is up to the government to determine whether to implement these recommendations. This GMS *Flash Alert* briefly explains the key elements of the report.

Why This Matters

In order to stay competitive in the global market, businesses based in the U.K. need to be able to recruit the best and brightest from around the world. They also need to be able to easily move skilled and experienced employees to the U.K. who can help support and grow their operations and, therefore, contribute to job creation and a buoyant U.K. economy.

The changes to the Tier 2 route proposed by the MAC could severely affect businesses' capacity to remain competitive and innovative. The changes could markedly increase the cost to business of ensuring the right employees are in the right place. In addition, it will make the application process under this visa category much more onerous. All told, with these proposed changes, it could sometimes not be possible to bring the relevant employees to the U.K. when it matters most.

Background

Tier 2 is the main visa route for employers to bring employees into the U.K. to work. Tier 2 immigration applies to non-European Economic Area (EEA) skilled workers with job offers in the United Kingdom. The U.K. government has for some time been concerned with the numbers of migrants entering the U.K. under the Tier 2 visa category. It is concerned that the ready access to non-European Union (EU) migrant labour may reduce incentives of U.K. employers to "up-skill" and utilise U.K.-resident workers.

The MAC was asked to explore how the level of economic migration from outside the EU may be reduced in favour of U.K. employers recruiting from the already existing U.K. workforce.

Salary Thresholds

The MAC recommends increasing the minimum earnings threshold for experienced hires in the Tier 2 (General) and short-term Tier 2 (Intra-Company Transfer) categories to £30,000. For new entrants in the Tier 2 (General) and Tier 2 (ICT- Graduate Trainee) categories, it recommends an increase to £23,000. This will be unaffected by regional earnings variations. The MAC recognizes that the public sector may require more time to adjust to the new salary thresholds, but should not be offered a permanent exemption.

KPMG Note

The MAC feels that raising the salary threshold is the most effective way to restrict migration and thereby oblige U.K. businesses to look to the U.K. resident labour market to fill vacancies instead. This does not take into account that some roles are genuinely difficult to fill in the U.K., especially in sectors with a high number of start-ups such as the digital and technology sector. In the current economic climate, businesses still have to be careful to balance the books, and introducing this level of increase at this time could have a negative effect on businesses' profitability and therefore success. The upshot could be that some businesses may decide to reduce their U.K. operations.

Immigration Skills Charge (ISC)

The MAC supports the introduction of an ISC levied across all Tier 2 routes except the Graduate Trainee and Skills Transfer routes within Tier 2 (ICT). It recommends a flat fee of £1,000 per year per visa applied for which would be paid at the time of the application. It appears that the charge may only apply to the main applicant and not to his/her dependants. While the U.K. government has yet to decide how it would spend the revenue raised by the ISC, the MAC advises it should be spent on “up-skilling” U.K. resident workers.

This is a charge in addition to the apprenticeship levy which will come into effect in April 2017 (for prior coverage, see GMS [Flash Alert 2015-144](#), 2 December 2015).

KPMG Note

This charge would be levied on businesses in addition to:

- a potentially increased minimum salary threshold;
- apprenticeship levy; and
- the Immigration Healthcare surcharge (for prior coverage, see GMS [Flash Alert 2015-046](#), 26 March 2015).

As such, the cost of recruiting non-EEA migrants could rise. The MAC contends that the ISC would pay towards the pressure migrants put on transport, health, and education, and should be used to enhance the skills base of U.K. resident workers. However, it remains to be seen whether the U.K. government would re-invest the revenue in such a way that U.K. businesses will actually see an improvement in the skills and experience of “home-grown” talent available to them in the United Kingdom.

Restriction to Tier 2 (General)

The MAC recommends that all in-country switching applications (such as Tier 4 (General) students switching into Tier 2 (General)) should be made subject to the Resident Labour Market Test and be included in an extended annual quota covering the whole of Tier 2 (General), unless the job is included in the Shortage Occupation List (SOL).

The MAC acknowledges that graduates are often disadvantaged when applying for Tier 2 (General) visas due to low salaries being offered at the start of their careers. It recommends, therefore, that new entrants recruited onto eligible graduate schemes should have their salaries artificially boosted by £7,000 in the monthly Restricted Certificate of Sponsorship allocation process.

It also advises against automatically removing jobs from the SOL after a certain amount of time and instead recommends more regular reviews of the SOL. U.K. employers would have to show comprehensive evidence regarding their efforts to resolve the shortage if they want specific jobs to remain on the SOL.

KPMG Note

Increasing the difficulty for graduates of U.K. universities to find employment after their studies could make the U.K. a less desirable place to study. Also, it could have a negative impact on businesses' ability to fill their graduate schemes with the best and brightest students. As a result, some businesses might choose to move their graduate recruitment out of the U.K. altogether.

Restrictions to Tier 2 (Intra-Company Transfers)

All Tier 2 (Intra-company Transfers)

The MAC recommends an increase of prior experience with an employer outside of the U.K. from 12 months to two years, except for the Graduate Trainee (6 months) and Skills Transfer (no experience) routes. It also advocates that employers be required to justify, for each application, why the migrant is required in the U.K. and the specific skills he or she possesses.

Another proposal from the MAC would extend the Immigration Healthcare surcharge to include all Tier 2 (ICT) routes (currently £200 per year for each applicant and each dependant).

The MAC also recommends that the U.K. government should investigate the issuance of permitted allowances, National Insurance, and tax contributions under this visa category to foster a level playing field with U.K. resident workers.

Third-Party Contracting

The MAC identified a widespread use of the Tier 2 (ICT) visa category to allow migrants to work on third-party sites under a contract for services, especially in the IT industry. So that no undercutting of the U.K. labour market occurs, the MAC suggests the introduction of a separate route for all third-party contracting visas with a minimum salary requirement of £41,500, regardless of the length of visa applied for.

KPMG Note

A large proportion of Tier 2 visas are issued under the ICT category. Employers like ICT visas because the visa application is straight-forward, the documentary requirements few, and they can be obtained relatively quickly. By increasing the minimum service length first with an employer outside the U.K., forcing businesses to essentially present a business case for each visa applied for, and increasing the costs of these visas via various channels, the U.K. government would make this category less flexible. Consequently, it could be harder for businesses to react in an agile fashion to new opportunities and service new contracts that may have been won.

Dependants' Right to Work

The MAC recommends that no restrictions should be placed on dependants' right to work in the United Kingdom. It was concluded that there was no evidence of a negative impact on the U.K. labour market of dependants working and that restricting skilled dependants from working may prevent them from integrating into U.K. society. Moreover, as 71 percent of adult Tier 2 dependants are female, there is evidence that such restrictions would affect women disproportionately.

KPMG Note

It is a sensible decision not to restrict dependants' access to the U.K. labour market. Doing so could have a detrimental effect on businesses being able to attract skilled migrants to the U.K., and would also mean U.K. businesses could lose out on being able to hire dependant workers who are highly skilled in their own right.

Timeframe

Some of the proposed changes could be implemented from April 2016 if the U.K. authorities decide to follow the MAC's recommendations. Other proposed changes, which may require legislation to be approved by Parliament, are unlikely to come into force before October 2016 at the earliest.

Conclusion

Immigration has recently featured in the news on an almost daily basis. Very few of the issues discussed tend to actually concern sponsored migrants. However, it appears the U.K. government feels the need to be seen to be doing something, and restricting the use of the Tier 2 route is one avenue it can actually control.

It remains to be seen whether the changes will benefit the U.K. resident workforce, or merely damage the competitiveness of businesses that have chosen the U.K. as their preferred location, or perhaps result in a mix of both.

In the U.K., KPMG LLP's Legal Service Immigration team consists of experts in U.K. immigration and sponsor compliance. We can assist your business with any U.K. immigration-related matters that may arise.

Footnote:

1 The report can be found at: <https://www.gov.uk/government/publications/migration-advisory-committee-mac-review-tier-2-migration> .

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